IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 1154 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 26/04/2004 in WP NO : 7870 OF 2004 on the file of the High Court.)

Between:

1 The Executive Engineer, (R&B) Division, Medak at Medak.
2 The Commissioner of Relief &EO, Secretary to Government,

Secretariat, Hyderabad.
3 The Chief Engineer (Roads & Buildings), Hyderabad.

..... APPELLANTS

AND

M/s Venkata Sai Constructions, Gajwel, Medak District,
rep. by its Proprietor B. Venkatesham, S/o Lakshmaiah, aged

34 years, R/o Gajwel, Medak District.

.....RESPONDENT

For the Appellants: Government Pleader for Transport.

For the Respondent: Mr. P. Venkateswar Rao, Advocate.

The Court made the following:

JUDGMENT: (per Sri B. Sudershan Reddy, J)

The respondent in the writ appeal filed the writ petition seeking a writ of Mandamus from this Court "declaring the action of the respondents in deducting the rice value Rs. 7.30 per kg which was supplied to the labourers under labour component instead of Rs.5.65 per kg from the final bills of the writ petitioner who completed the videning the carriage way of S.N.T.G.J Raod from K.75/2 to 75/5 in Gajwel Town limits under Food for Work Porgramme through agreement No. 147/2001-02 dated 20.10.2001 as bad, arbitrary, illegal…….consequently direct the respondent to pay the difference of amount (Rs.1.65 paisa per Kg) for the rice supplied under labour component which was deducted by the respondent herein".

That according to the averments made in the affidavit filed in support of the writ petition, the writ petitioner was entrusted with the work of widening the carriageway of Sangareddy-Narsapur-Toopran_Gajwel-Jagdevpur Road from KM 75/2 to 75/5 in Gajwel town limits under the Food for Work Programme. An agreement was admittedly entered into by and between the parties on 20.10.2001. According to the petitioner, the consideration for the work was in two shapes namely one in cash component and another in labour component. The total estimation of contract value was at Rs.8,90,028.78 ps. The petitioner claims to have completed the work successfully. But according to the petitioner, as per the terms and conditions incorporated in the agreement, the labour component was agreed to be at Rs.5.65/- per kg but the respondents have deducted Rs. 7.30 per kg for the rice which was supplied to the labourers. The action of the appellants according to the writ petitioner has resulted in financial loss. The case set up by the writ petitioner is that the appellants herein are entitled to deduct the value of the rice at Rs.5.65 per kg instead of Rs.7.30 per kg.

The writ petitioner relied upon G.O Ms.No. 916 (Revenue Relief II) Department

dated 14.11.2002 which is to the following effect:

> "The guideline No. 16 in the existing guidelines issued vide circular Memo dated 27.10.2001 on value of rice to be fixed for the purpose of adjusting the value of rice issued against the running bills of the works at Rs.5.65 kg is deleted".

It is submitted that according to the Government Memo dated 27.10.2001 wherein certain guidelines were issued, the Government indicated that for the purpose of adjusting the value of rice issued against the running bills of the works, the cost of the rice will be at Rs.5.65 per kg. Since that memo has been repealed or superceded by G.O Ms. No. 916 dated 14.11.2002 referred to hereinabove, the case of the petitioner is that the latest amended guideline is not applicable to the agreement. His case is covered by the earlier memo dated 27.10.2001. That is all what is stated in the writ petition.

The learned single Judge without any rule nisi at the stage of admission disposed of the writ petition directing the appellants herein to compute the value of rice component by working out the same at the rate of Rs.5.65 ps per kg and if any amount is deducted over and above the rate, the writ petitioner is entitled for payment of difference amount. The learned Judge accordingly directed payments to be made to the writ petitioner within a period of six weeks from the date of receipt of the order.

In this appeal, learned Government Pleader for Transport submitted that the dispute between the appellants and the respondent-writ petitioner, if any arises is out of the concluded contract voluntarily entered into by and between the parties. The public law remedy available under Article 226 of the Constitution is not available to adjudicate the disputes that arise out of concluded agreements. Learned Government Pleader also contended that directions which ultimately resulted in compelling the appellants to pay certain extra money to the writ petitioner would not have been issued without any adequate notice and opportunity to the appellants.

Learned counsel for the writ petitioner submitted that after completing the works in terms of the agreement, the appellants are bound to settle the bills finally and pay whatever amounts that are liable to be paid. Learned counsel further contended that the Government memo dated 27.10.2001 is binding upon the

appellants and the writ petitioner is entitled to payment in terms of the said memo.

We have given our anxious consideration to the rival submissions made. We find it difficult to sustain the order passed by the learned single Judge for more than one reason. Firstly, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue directions and that too at the stage of admission which are in the nature of money decree. The case on hand is not one where there is no dispute between the parties. The parties are at variance as to at which rate the writ petitioner is entitled to payment so far as labour component is concerned. Such disputed questions of fact cannot be satisfactorily gone into in a public law remedy. We are in complete agreement with the learned Government Pleader that such orders cannot be passed by this Court even at the admission stage.

Admittedly, the dispute between the parties arises out of a concluded contract. The contract undertaken by the petitioner itself is subject to such terms and conditions which are mutually agreed upon and incorporated in the agreement. The contract between the parties is not a statutory contract. The dispute essentially is in the realm of private law remedy. It is not the question of jurisdiction but is one of exercise of jurisdiction. Learned counsel for the writ petitioner may be right to some extent in contending that this Court is not without jurisdiction to entertain the writ petition but as we have observed it is a case of exercise of jurisdiction. The dispute between the parties is required to be resolved in a properly constituted proceedings in accordance with the terms and conditions of agreement entered into by and between the parties.

The memorandum dated 27.10.2001 issued by the Government is in the nature of guidelines meant for the authorities concerned and it does not confer any enforceable right upon the writ petitioner.

However, the learned counsel for the writ petitioner contended that the writ petitioner is entitled for settlement of his final bills. But that is not the issue raised in the writ petition. It would have been totally a different matter had the learned single Judge issued directions to the appellants herein to settle the final bills of the writ petitioner. The learned single Judge issued directions virtually compelling the appellants herein to make certain payments at the rate suggested in the order.

For the aforesaid reasons, we find no merit in the writ petition. The judgment under appeal is set aside. The Writ Petition shall accordingly stand dismissed without

costs. The Writ Appeal is accordingly allowed. No order as to costs.

The appellants, however, shall take appropriate steps and if they have not so far settled the final bills shall settle the same in accordance with law.

(B. Sudershan Reddy, J)

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(K.C. Bhanu, J)

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SECTION OFFICER

That rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Nineteenth day of August, Two Thousand and Four.

To

1 The Executive Engineer, (R&B) Division, Medak at Medak.
2 The Commissioner of Relief &EO, Secretary to Government,

Secretariat, Hyderabad.
3 The Chief Engineer (Roads & Buildings), Hyderabad.

4 2 CCs to the Government Pleader for Transport, High Court

Buildings, Hyderabad (OUT).

5 Two CD copies.